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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Case No. 1:19-cr-227
1:23-cr-37
(LJV)

v.
Plaintiff,

PETER GERACE, JR.,

November 20, 2024

Defendant.

TRANSCRIPT EXCERPT - EXAMINATION OF ANTHONY CASULLO
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES: TRINI E. ROSS, UNITED STATES ATTORNEY

BY: JOSEPH M. TRIPI, ESQ.

NICHOLAS T. COOPER, ESQ.

CASEY L. CHALBECK, ESQ.

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For the Defendant

PRESENT:

KAREN A. CHAMPOUX, USA PARALEGAL

BRIAN A. BURNS, FBI SPECIAL AGENT

MARILYN K. HALLIDAY, HSI SPECIAL AGENT

LAW CLERK:

REBECCA FABIAN IZZO, ESQ.

COURT CLERK:

COLLEEN M. DEMMA

REPORTER:

ANN MEISSNER SAWYER, FCRR, RPR, CRR

Robert H. Jackson Courthouse

2 Niagara Square Buffalo, New York 14202

Ann_Sawyer@nywd.uscourts.gov

1 (Excerpt commenced at 4:07 p.m.)

2 (Jury is present.)

3 **THE COURT:** The government can call its next witness.

4 **MR. COOPER:** I just spilled my water, sorry.

5 The government calls Tony Casullo, Judge.

6

7 **A N T H O N Y C A S U L L O**, having been duly called and

8 sworn, testified as follows:

9 **MR. COOPER:** May I inquire, Judge?

10 **THE COURT:** Yes.

11

12 **DIRECT EXAMINATION BY MR. COOPER:**

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. Can you introduce yourself to the jury?

16 A. Yes, hi, my name is Anthony Casullo, I was a special
17 agent with the DEA for about 23 years.

18 Q. And where do you live currently?

19 A. I currently live in Clarence, New York.

20 Q. How long have you lived in that Clarence, New York area?

21 A. I purchased the house in about 2012. And then I worked
22 in New York City and went back and forth for about two years.
23 So, since 2015.

24 Q. Okay. Is this Western New York area the area where you
25 grew up?

04:09PM 1 A. Yes.

04:09PM 2 Q. Where'd you go to high school at?

04:09PM 3 A. I went to Saint Joe's Collegiate Institute.

04:09PM 4 Q. You mentioned in the introduction part that you had a

04:09PM 5 career working at the DEA for about 25 years. We're gonna

04:09PM 6 cover that in a second. But currently, are you working?

04:09PM 7 A. Yeah, I do, I am currently working.

04:09PM 8 Q. What kind of work do you do currently?

04:09PM 9 A. I work as a subject matter expert, an advisor for a U.S.

04:09PM 10 technology company. It's a company that's under contract

04:09PM 11 with the U.S. Department of State to provide foreign

04:09PM 12 assistance to foreign governments on law enforcement systems,

04:09PM 13 like case management systems, intelligence systems.

04:09PM 14 Q. How long have you worked at that job for?

04:09PM 15 A. Oh, I think about a year and -- about a year and four

04:09PM 16 months, three months.

04:09PM 17 Q. Okay. I want to talk with you now about your career in

04:09PM 18 law enforcement. How did your career in law enforcement

04:10PM 19 start?

04:10PM 20 A. It started when I graduated from Canisius College, there

04:10PM 21 were some recruiters at my college, one of them being the

04:10PM 22 Immigration Service at the time, which is now Customs and

04:10PM 23 Border Protection. Excuse me. And I spoke with one of the

04:10PM 24 individuals there that was at our college, and ultimately

04:10PM 25 about a year later started working as an immigration

04:10PM 1 inspector in Toronto, Canada, doing preflight inspections,
04:10PM 2 what you see at the border, but we worked in Canada clearing
04:10PM 3 flights before they came to the U.S.

04:10PM 4 Q. What year was that that you started doing that work?

04:10PM 5 A. That was December of 1990.

04:10PM 6 Q. Did you eventually end up working at the DEA?

04:10PM 7 A. I did.

04:10PM 8 Q. Okay. When did you start working at the DEA?

04:10PM 9 A. I was hired by the DEA in July of 1999.

04:10PM 10 Q. Okay. And when did you ultimately retire at the DEA?

04:10PM 11 A. I retired from DEA in March of 2022.

04:10PM 12 Q. After you -- well, let's, I guess, start here.

04:11PM 13 When you switched over to the DEA, did you go through a
04:11PM 14 training academy?

04:11PM 15 A. Yes, I did.

04:11PM 16 Q. About how long did that last?

04:11PM 17 A. I believe it was, like, 20 weeks.

04:11PM 18 Q. What office did you start out in after that training
04:11PM 19 academy?

04:11PM 20 A. So I was hired out of the Buffalo office. Graduated from
04:11PM 21 the academy, came back to Buffalo for a month, but my
04:11PM 22 assignment that I received when I was at the academy was
04:11PM 23 Las Vegas, Nevada.

04:11PM 24 Q. So did your work bring you out to Las Vegas?

04:11PM 25 A. Pardon?

04:11PM 1 Q. Did your work bring you out to Las Vegas?

04:11PM 2 A. Yes. We moved out to Las Vegas in December of 1999.

04:11PM 3 Q. Can you just describe for the jury, generally, what kind
04:11PM 4 of work you did at the DEA in Las Vegas?

04:11PM 5 A. Sure. Generally, there were several different groups, my
04:11PM 6 first assignment was in a gang task force. So I worked

04:11PM 7 narcotics investigations in a task force with Las Vegas metro
04:12PM 8 police officers, I believe there were three DEA agents and

04:12PM 9 eight Las Vegas metro gang detectives, and we worked

04:12PM 10 narcotics investigations primarily on gang members and gang

04:12PM 11 organizations in the Clark County, Las Vegas area.

04:12PM 12 Q. After a period of time working as a DEA special agent in

04:12PM 13 the Las Vegas office, did there come a time when you decided

04:12PM 14 to leave the DEA and go to a different federal agency?

04:12PM 15 A. Yes.

04:12PM 16 Q. Can you describe that for the jury, please?

04:12PM 17 A. Sure. So I was working for the DEA when 9/11 happened.

04:12PM 18 And I applied for DEA and FBI both about the same time.

04:12PM 19 After 9/11, I wanted to work terrorism investigations, I

04:12PM 20 had an interest in doing that because of what happened. And

04:12PM 21 I ended up calling up the FBI recruiter, reactivated my

04:12PM 22 application, and was hired by the FBI about nine months after

04:12PM 23 9/11.

04:12PM 24 Q. Okay. So at that point, had you been working for the DEA
04:13PM 25 for about two, two years or so?

04:13PM 1 A. Correct.

04:13PM 2 Q. And maybe two-and-a-half years?

04:13PM 3 A. Um-hum. It was about two years, yeah.

04:13PM 4 Q. Okay. After that, when you contacted this FBI recruiter,
04:13PM 5 did you leave Las Vegas and go somewhere else?

04:13PM 6 A. I did.

04:13PM 7 Q. Where'd you go?

04:13PM 8 A. So I went to the FBI Academy. Similar to the DEA
04:13PM 9 Academy, it was 20 -- about 20 weeks in Quantico. And then I
04:13PM 10 received my assignment when I was in Quantico for
04:13PM 11 Fayetteville, North Carolina. It was a small resident office
04:13PM 12 of about three -- three or four agents in Fayetteville
04:13PM 13 outside Fort Bragg.

04:13PM 14 Q. Not trying to be cheeky here, but was Fayetteville, North
04:13PM 15 Carolina your first choice?

04:13PM 16 A. No. The division was higher up on my list, which was the
04:13PM 17 Charlotte Division, but Fayetteville, which fell underneath
04:13PM 18 it, wasn't.

04:13PM 19 Q. Okay. And just -- just to explain real quick,
04:13PM 20 "division," you say, is that a larger geographical area?

04:13PM 21 A. Right. The division is the main office, and then within
04:13PM 22 a division there will be smaller offices. And Fayetteville
04:13PM 23 is one of the smaller offices of the Charlotte Division for
04:14PM 24 the FBI.

04:14PM 25 Q. Okay. And I don't want to spend much time on this, but

04:14PM 1 when you were at the Fayetteville office with the FBI, were
04:14PM 2 you able to do the work that you had hoped to do when you
04:14PM 3 switched over to the FBI?

04:14PM 4 A. No, I barely worked terrorism investigations. It was
04:14PM 5 just a smaller office. We worked mostly violent crime and
04:14PM 6 bank robberies.

04:14PM 7 Q. Were you happy with the area generally where you were
04:14PM 8 living?

04:14PM 9 A. No. We -- I did a house-hunting trip, and wasn't really
04:14PM 10 pleased with the area. I'd have to commute further away from
04:14PM 11 where I wanted to live, possibly up in Raleigh, it was over
04:14PM 12 an hour. Long story short, I told my wife to hold off on
04:14PM 13 selling the house, it wasn't somewhere that I wanted to send
04:14PM 14 my kids to school in that area, and we ultimately chose --
04:14PM 15 well, I don't want to get too far ahead of you.

04:14PM 16 Q. No, that's -- you're doing fine, sir.

04:14PM 17 A. I ended up staying with the FBI for about a year and a
04:14PM 18 half. I had two years to go back to DEA. If I waited longer
04:14PM 19 than two years, I'd have to restart the process again, go to
04:15PM 20 the academy again, and I ended up going back to DEA in
04:15PM 21 Las Vegas after about a year and a half with the FBI.

04:15PM 22 Q. So after that short stint with the FBI, do you take --
04:15PM 23 you decide to move back to DEA about a year and a half a
04:15PM 24 later?

04:15PM 25 A. It was about a year and a half.

04:15PM 1 Q. Okay. Did you end up going back to the Las Vegas office?

04:15PM 2 A. Yes.

04:15PM 3 Q. Now, were you hoping to come back home at some point in

04:15PM 4 your career to work in Western New York?

04:15PM 5 A. That was our plan initially, to come back at some point.

04:15PM 6 Q. Okay. Did you have a wife and kids?

04:15PM 7 A. I do. I have a wife and four children.

04:15PM 8 Q. Okay. And so, was your goal to kind of get back around

04:15PM 9 near family?

04:15PM 10 A. It was a goal to come back at some point to raise the

04:15PM 11 kids in the Western New York area. My family was from

04:15PM 12 Western New York, and my wife's family -- had family in

04:15PM 13 Western New York.

04:15PM 14 Q. Did that eventually happen, that you were able to switch

04:15PM 15 back to New York?

04:15PM 16 A. Yes.

04:15PM 17 Q. Can you explain to the jury how that worked out?

04:15PM 18 A. Sure. We finally decided to make the move back. It was

04:15PM 19 around 2012. So we stayed out there for a while in

04:16PM 20 Las Vegas, we chose to stay until our kids got to high

04:16PM 21 school. Then we had wanted to come back and have them do

04:16PM 22 high school in Western New York, we thought the schools are

04:16PM 23 better. So, at the time I wanted to come back, there were no

04:16PM 24 vacancies in the Buffalo office, which falls under the

04:16PM 25 New York office. The New York office is a division.

04:16PM 1 So, I was told if I went to New York City for two years
04:16PM 2 and work there, as soon as someone retired in Buffalo or left
04:16PM 3 for another assignment, that I could fill that slot. And
04:16PM 4 that's what I did.

04:16PM 5 Q. During the two-year period that you worked in the
04:16PM 6 New York City office, did your family live here in Buffalo?

04:16PM 7 A. They did. I had a house here, and I had a small
04:16PM 8 apartment in New Jersey, and kind of went back and forth for
04:16PM 9 a couple years.

04:16PM 10 Q. What year did you eventually get assigned to the DEA
04:16PM 11 Buffalo resident office?

04:16PM 12 A. I was assigned to Buffalo, it was September of 2015.

04:16PM 13 Q. Are there different groups at the DEA Buffalo resident
04:17PM 14 office?

04:17PM 15 A. Yes.

04:17PM 16 Q. What are they?

04:17PM 17 A. They're by number. There was one group that's D-57, it's
04:17PM 18 called a general enforcement group, meaning that it's mostly
04:17PM 19 agents, DEA agents. And then there were a few local
04:17PM 20 officers, detectives assigned to that group.

04:17PM 21 And then there's another group called D-58, which is
04:17PM 22 called a task force group, which is kind of like the
04:17PM 23 opposite. It's primarily detectives and task force officers,
04:17PM 24 local and state officers, and maybe two or three agents in
04:17PM 25 the group.

04:17PM 1 And then the third group is called a tactical diversion
04:17PM 2 squad, which is DEA agents and detectives kind of half and
04:17PM 3 half that work mostly, like, pharmaceutical-type cases,
04:17PM 4 diversion of controlled substances -- controlled substances
04:17PM 5 that are being used illicitly.

04:17PM 6 Q. Okay. So does the third group, diversion, does that
04:17PM 7 focus on, like, pharmacies and doctors offices?

04:17PM 8 A. Yeah. Mostly.

04:18PM 9 Q. Okay. The other groups, D-57 and D-58, I want to focus
04:18PM 10 on that for just a second.

04:18PM 11 You talked about special agents. Is that the title that
04:18PM 12 you had after going through the DEA Academy?

04:18PM 13 A. Correct.

04:18PM 14 Q. Did the DEA also permit members of local law enforcement,
04:18PM 15 just as an example, let's say the Erie County Sheriff's
04:18PM 16 Office, to become task force officers that worked at the DEA
04:18PM 17 building with DEA agents?

04:18PM 18 A. Yes. And that was my experience.

04:18PM 19 Q. Okay. And so when we -- when we use the phrase "task
04:18PM 20 force officer," is that someone who's primarily employed by a
04:18PM 21 local or state law enforcement agency?

04:18PM 22 A. Yes.

04:18PM 23 Q. Can it sometimes even be someone from a different federal
04:18PM 24 agency?

04:18PM 25 A. Yeah. They're called task force agents, but it's

04:18PM 1 essentially the same thing.

04:18PM 2 We have both state and locals at DEA that will work in
04:18PM 3 groups with agents. And we also have other federal officers
04:18PM 4 from different agencies, whether it's the Customs and Border
04:18PM 5 Protection, ATF, I've worked with FBI, agents from all
04:18PM 6 different agencies.

04:19PM 7 Q. Okay. While you were -- strike that. Let me move ahead
04:19PM 8 here.

04:19PM 9 While you were at the DEA in Las Vegas, did you work with
04:19PM 10 a boss who had some experience working on organized crime
04:19PM 11 cases?

04:19PM 12 A. I did.

04:19PM 13 Q. Okay. And so back when you're in Las Vegas working with
04:19PM 14 that boss, does the opportunity present itself for you to
04:19PM 15 work on organized crime cases?

04:19PM 16 A. Yes.

04:19PM 17 Q. Were you interested in that?

04:19PM 18 A. Yes.

04:19PM 19 Q. We're gonna pause there for a second and move to a new
04:19PM 20 topic.

04:19PM 21 When you became a special agent the DEA, did you take an
04:19PM 22 oath?

04:19PM 23 A. Yes, I did.

04:19PM 24 Q. Generally, what was the promise that you made when you
04:19PM 25 took that oath?

04:19PM 1 A. To enforce the U.S. drug laws, excuse me, and to protect
04:19PM 2 the U.S. Constitution from all enemies, both foreign and
04:20PM 3 domestic, essentially.

04:20PM 4 Q. As a DEA special agent when you went through training,
04:20PM 5 were you given trainings on ethics?

04:20PM 6 A. Yes.

04:20PM 7 Q. As a DEA special agent, based on your 20-plus years
04:20PM 8 experience, were you supposed to choose who you investigated
04:20PM 9 based on that person's race or ethnicity?

04:20PM 10 A. No.

04:20PM 11 Q. Was that prohibited by DEA policy?

04:20PM 12 A. Yes.

04:20PM 13 Q. Mr. Casullo, do you know a person by the name of Joseph
04:20PM 14 Bongiovanni?

04:20PM 15 A. Yes.

04:20PM 16 Q. How do you know that person?

04:20PM 17 A. He was a DEA agent that worked in the Buffalo office
04:20PM 18 while I was in the Buffalo office.

04:20PM 19 Q. Okay. How long did you work with Joseph Bongiovanni at
04:20PM 20 the Buffalo resident office?

04:20PM 21 A. When I first went to Buffalo, we were in the both -- we
04:21PM 22 were both in the same group together. And I was in that
04:21PM 23 group for maybe I don't know, two, two-and-a-half years.

04:21PM 24 And then I went to the task force group that I explained,
04:21PM 25 the D-58 group, I went to that group after group D-57, and

04:21PM 1 then we were in different groups up until I retired.

04:21PM 2 Q. Okay. And so would it be -- well, let me start this way.

04:21PM 3 When you arrived at the DEA Buffalo resident office, was
04:21PM 4 Bongiovanni already working there?

04:21PM 5 A. Yes.

04:21PM 6 Q. Was it your understanding that he had been working there
04:21PM 7 for quite some time?

04:21PM 8 A. Yes.

04:21PM 9 Q. Did there come a time in or around 2019 when he retired
04:21PM 10 from the DEA?

04:21PM 11 A. Yes.

04:21PM 12 Q. Okay. Were you still working there at that time?

04:21PM 13 A. Yes.

04:21PM 14 Q. So, would it be fair to say from about 20 -- is it 2015
04:21PM 15 when you started in Buffalo?

04:21PM 16 A. September of 2015.

04:21PM 17 Q. So from about September of 2015 until sometime in early
04:21PM 18 2019, did you work together with Joseph Bongiovanni?

04:21PM 19 A. Yes.

04:21PM 20 Q. For a portion of that time, were you in the same group?

04:22PM 21 A. Yes.

04:22PM 22 Q. Which group was that?

04:22PM 23 A. D-57.

04:22PM 24 Q. When you first arrived to the Buffalo office in or around
04:22PM 25 September of 2015, can you describe for this jury, what was

04:22PM 1 your relationship like with Bongiovanni?

04:22PM 2 A. I knew of Joe. I had met him before. I had come back
04:22PM 3 when I worked in Las Vegas to Buffalo to visit family, and
04:22PM 4 sometimes I'd meet some of the Buffalo agents out.

04:22PM 5 One agent in particular, we both went to the academy
04:22PM 6 together, and he moved back to Buffalo before I did. So I
04:22PM 7 met him maybe once or twice over the summer, so I knew who he
04:22PM 8 was.

04:22PM 9 Q. Did you guys have problems at that time?

04:22PM 10 A. No.

04:22PM 11 Q. Did you like him, generally?

04:22PM 12 A. Yeah, he was generally a fine person.

04:22PM 13 Q. Okay. During the time that you worked at the DEA Buffalo
04:22PM 14 resident office, did you ever work on investigations with the
04:22PM 15 defendant, or with Joseph Bongiovanni? I'm sorry.

04:22PM 16 A. Yes, we worked as partners on a couple different
04:23PM 17 investigations.

04:23PM 18 Q. I'm going to ask a general question first, and then we
04:23PM 19 can get into some more specifics.

04:23PM 20 Between 2015 when you started and 2019 when Bongiovanni
04:23PM 21 retired, did your relationship with him change?

04:23PM 22 A. Yes.

04:23PM 23 Q. Did it change because of things that he said to you?

04:23PM 24 A. Yes.

04:23PM 25 Q. As you sit here today, can you describe for the jury how

04:23PM 1 you feel about Bongiovanni?

04:23PM 2 A. I went through different feelings over the time that I
04:23PM 3 knew him, starting with getting along, working cases. And
04:23PM 4 then things changed where -- to the point now I have no
04:23PM 5 feelings about him.

04:23PM 6 I went through a hard time of someone that I trusted to
04:23PM 7 someone that I didn't trust, and was hurt by it, was angry,
04:23PM 8 was sad, was confused.

04:24PM 9 But at this point in my life, I have no feelings
04:24PM 10 whatsoever for him.

04:24PM 11 Q. Do you know a person by the name of Peter Gerace?

04:24PM 12 A. Yes.

04:24PM 13 Q. How do you know that person?

04:24PM 14 A. I went to high school with Peter Gerace at Saint Joe's,
04:24PM 15 we were both in the same graduating class.

04:24PM 16 Q. Were you friends with him in high school?

04:24PM 17 A. We knew each other. It was a small school. But we
04:24PM 18 never -- we never hung out.

04:24PM 19 Q. Have you ever at any point in your life been friends with
04:24PM 20 Peter Gerace?

04:24PM 21 A. No.

04:24PM 22 Q. Did you ever go to dinner with him?

04:24PM 23 A. No.

04:24PM 24 Q. Did you ever go on double dates together?

04:24PM 25 A. No.

04:24PM 1 Q. Did you ever go on vacation together?

04:24PM 2 A. No.

04:24PM 3 Q. Do you have a relation or a family member who you know or

04:24PM 4 you believe to be friends with Mr. Gerace?

04:24PM 5 A. Yes.

04:24PM 6 Q. Who's that person?

04:25PM 7 A. My wife's brother is friends with Peter Gerace.

04:25PM 8 Q. What's that person's name, your wife's brother?

04:25PM 9 A. Phil Domiano.

04:25PM 10 Q. Can you describe for the jury, do you have a relationship

04:25PM 11 with Phil Domiano?

04:25PM 12 A. No. I did when I dated my wife and we got married. But

04:25PM 13 things changed after I moved out to Las Vegas with DEA, and

04:25PM 14 to the point that he's not even allowed at my house.

04:25PM 15 Q. You said when you were dating your wife. What year? I'm

04:25PM 16 not trying to make fun, what year was that, though?

04:25PM 17 A. Oh, well, I was in college. So, 1987.

04:25PM 18 Q. Okay. A long time ago, is that fair to say?

04:25PM 19 A. A long time ago, yeah.

04:25PM 20 Q. In 20 -- in 2015 when you moved back to Buffalo, did you

04:25PM 21 have a relationship with Phil Domiano?

04:25PM 22 A. No. He lived in Las Vegas, we lived in Buffalo. And

04:25PM 23 it -- when I first came back, he still visited a few times.

04:25PM 24 And then things changed to the point that he wasn't allowed

04:26PM 25 at our house at all.

04:26PM 1 Q. Does Mr. Domiano associate with people, and are those
04:26PM 2 associations that you didn't approve of?

04:26PM 3 A. Yes.

04:26PM 4 Q. Did Mr. Domiano's relationship with, you know, family
04:26PM 5 relation to your wife, influence your work at the DEA at all?

04:26PM 6 A. No.

04:26PM 7 Q. Does his relationship or your belief that he has a

04:26PM 8 relationship with Peter Gerace, did that influence your work
04:26PM 9 at the DEA at all?

04:26PM 10 A. No.

04:26PM 11 **MR. COOPER:** I don't think this is in yet, so for the
04:26PM 12 witness only, can we show Government's Exhibit 99?

04:26PM 13 **BY MR. COOPER:**

04:27PM 14 Q. I want you to take a moment, sir, and look at that, and
04:27PM 15 then when you're finished with the first page, you tell me,
04:27PM 16 and I'll have Ms. Champoux move to the next page.

04:28PM 17 **MR. COOPER:** Ms. Champoux, can you go to the next
04:28PM 18 page, please? And the next page. And the next page. And the
04:28PM 19 next page. And the next page. And the next page. And the
04:28PM 20 next page. And the next page. And the next page. And the
04:29PM 21 next page. And the next page. And the next page. And the
04:29PM 22 next page. And I think one more time, the next page.

04:29PM 23 Is that it, Ms. Champoux? Or is there more?

04:29PM 24 Oh, there you go. That's the last page. Thank you.

25

04:29PM

1 BY MR. COOPER:

2 Q. All right. So, sir, you just looked at the 17 different
3 pages of Government Exhibit 99, do you recognize that?

4 A. Just a couple paragraphs in the very first page, I -- not
5 the rest of it.

6 Q. Got it. So have you seen that first page, have you seen
7 that before today?

8 A. Part of it, not all of it.

9 Q. Got it.

10 MR. COOPER: Can you go back to the first page,
11 Ms. Champoux?

12 BY MR. COOPER:

13 Q. Do you recognize what this is?

14 A. Yes.

15 Q. Is it a memorandum, a DEA memorandum?

16 A. Yes.

17 Q. Does it have the DEA seal on it?

18 A. Yes.

19 Q. Do you recognize the names of the people that are written
20 on it?

21 A. Yes.

22 Q. Is there a signature on it?

23 A. Yes.

24 Q. Do you recognize that?

25 A. Yes.

04:30PM 1 Q. Who signed it?

04:30PM 2 A. Joseph Bongiovanni.

04:30PM 3 Q. Okay. And what's the date on it?

04:30PM 4 A. January 28th, 2019.

04:30PM 5 Q. And what's the subject of the memo?

04:30PM 6 A. Communication with Peter Gerace by Special Agent Anthony
04:30PM 7 Casullo and Phil Domiano.

04:30PM 8 Q. Who's the memorandum addressed to?

04:30PM 9 A. To Edward A. Orgon, Jr.

04:30PM 10 Q. Okay. And did you know that person?

04:30PM 11 A. Yes.

04:30PM 12 Q. Who was that person?

04:30PM 13 A. That's the resident agent in charge, like, the head of
04:30PM 14 the Buffalo DEA office.

04:30PM 15 Q. And who's the memo from?

04:30PM 16 A. It's from Joseph Bongiovanni.

04:30PM 17 Q. Okay.

04:30PM 18 **MR. COOPER:** Judge, I'd ask if we can come up just
04:30PM 19 briefly on a conversation.

04:30PM 20 **THE COURT:** Yeah, come on up.

04:30PM 21 **MR. COOPER:** Thanks.

04:30PM 22 (Sidebar discussion held on the record.)

04:31PM 23 **MR. COOPER:** I appreciate it.

04:31PM 24 So, Judge --

04:31PM 25 **THE COURT:** This is it's gonna come in eventually,

04:31PM 1 right?

04:31PM 2 **MR. FOTI:** I think the government will probably say
04:31PM 3 that they expect to lay a foundation and that it eventually
04:31PM 4 will. I -- that may be the case, but at this point, I don't
04:31PM 5 think the foundation is there, but -- so I will object at this
04:31PM 6 point, but I understand if it's allowed in subject to
04:31PM 7 connection.

04:31PM 8 **MR. COOPER:** That's what I asked Mark when I walked
04:31PM 9 over, was I anticipated the objection, I'm going to ask the
04:31PM 10 Court to allow it in subject to connection given that we're
04:31PM 11 going to call a witness who can authenticate it.

04:31PM 12 **THE COURT:** And you don't object to that? Because it
04:31PM 13 is -- it's hearsay now, and there's no hearsay within hearsay
04:31PM 14 in it because it's --

04:31PM 15 **MR. COOPER:** I'll end up recalling -- with the
04:31PM 16 Court's permission, what I'll end up doing is recalling Tony
04:31PM 17 after this next witness -- or, that witness ultimately
04:32PM 18 testifies, so I'm trying to avoid that.

04:32PM 19 **THE COURT:** So tell me about what you want.

04:32PM 20 **MR. FOTI:** I'm fine letting it in subject to
04:32PM 21 connection, but if it's not laid, we'll move to strike it.

04:32PM 22 **THE COURT:** Absolutely.

04:32PM 23 (End of sidebar discussion.)

04:32PM 24 **MR. COOPER:** Judge, with that limited foundation, and
04:32PM 25 based on our conference at the bench, I'm going to ask to move

04:32PM 1 this Government Exhibit 99 in subject to connection.

04:32PM 2 **THE COURT:** Mr. Foti?

04:32PM 3 **MR. FOTI:** No objection under those -- with that
04:32PM 4 understanding.

04:32PM 5 **THE COURT:** Right. So, so it's moved into evidence
04:32PM 6 subject to connection.

04:32PM 7 What that means, it's kind of provisionally in
04:32PM 8 evidence now. Mr. Cooper and the government are going to call
04:32PM 9 a witness later on to authenticate this. It's not been
04:32PM 10 authenticated yet.

04:32PM 11 But based on the representation of the government
04:32PM 12 that they have a witness who's going to authenticate it, we're
04:32PM 13 going to let it in now so as not to waste time.

04:32PM 14 Go ahead. So it's admitted subject to connection.

04:32PM 15 **(GOV Exhibit 99 was received in evidence.)**

04:32PM 16 **MR. COOPER:** Before we publish that, Ms. Champoux,
04:32PM 17 can you zoom in on this portion that I'm highlighting here?

04:32PM 18 All the way across. Yeah, there you go.

04:33PM 19 Nope, just up to where I highlighted. Thank you.

04:33PM 20 I'd ask that this be published to the jury.

04:33PM 21 **THE CLERK:** Go ahead.

04:33PM 22 **MR. COOPER:** Thank you, ma'am.

04:33PM 23 **BY MR. COOPER:**

04:33PM 24 Q. Mr. Casullo, can you see this on the screen in front of
04:33PM 25 you?

04:33PM 1 A. Yes.

04:33PM 2 Q. Is this a portion of that memo that we talked about?

04:33PM 3 A. Yes.

04:33PM 4 Q. Is it your understanding that Joseph Bongiovanni wrote
04:33PM 5 this memo?

04:33PM 6 A. Yes.

04:33PM 7 Q. Is it about you?

04:33PM 8 A. Yes.

04:33PM 9 Q. Let's go through it.

04:33PM 10 This first sentence here, can you read that out loud to
04:33PM 11 the jury?

04:33PM 12 A. S.A. Joseph Bongiovanni is writing to inform you of
04:33PM 13 information that he has acquired regarding the social
04:34PM 14 affiliation and recent communications with Peter Gerace by
04:34PM 15 Anthony Casullo and S.A. Casullo's brother-in-law, Phil
04:34PM 16 Domiano.

04:34PM 17 Q. Do you have a social affiliation with Peter Gerace?

04:34PM 18 A. No.

04:34PM 19 Q. Is that sentence true?

04:34PM 20 A. No.

04:34PM 21 Q. Can you read the next sentence?

04:34PM 22 A. In that past, S.A. Bongiovanni has verbally informed you,
04:34PM 23 my group supervisor, Greg Yensan, and our ASAC, David T. Zon,
04:34PM 24 of information confirming the friendship of Domiano, Casullo,
04:34PM 25 and Gerace.

04:34PM 1 Q. Is that sentence true?

04:34PM 2 A. No.

04:34PM 3 Q. Were you friends with Phil Domiano?

04:34PM 4 A. No.

04:34PM 5 Q. Were you friends with Peter Gerace?

04:34PM 6 A. No.

04:34PM 7 Q. Can you read the next sentence?

04:34PM 8 A. Furthermore, S.A. Bongiovanni has attached information

04:34PM 9 confirming that Domiano was a former manager of Pharaoh's

04:34PM 10 Gentlemen's Club in Cheektowaga, New York on behalf of

04:34PM 11 Gerace.

04:34PM 12 Q. Do you know whether that sentence is true or not?

04:35PM 13 A. Well, I do now.

04:35PM 14 Q. Okay. How about that bottom portion there, can you read

04:35PM 15 that for the jury?

04:35PM 16 A. S.A. Bongiovanni has personally witnessed S.A. Casullo

04:35PM 17 meeting and drinking socially with Peter Gerace alone at the

04:35PM 18 Big Ditch Brewery and later at Tappo Italian Restaurant in

04:35PM 19 Buffalo, New York at approximately at 9:45 p.m. on the

04:35PM 20 evening of June 13th, 2015.

04:35PM 21 Q. Is this a memo -- is it your understanding this is a memo

04:35PM 22 that Bongiovanni sent to his boss at the DEA?

04:35PM 23 A. Yes.

04:35PM 24 Q. That portion at the bottom there, about drinking socially

04:35PM 25 with Peter Gerace alone at the Big Ditch Brewery, is that

04:35PM 1 true?

04:35PM 2 A. No.

04:35PM 3 Q. Did you drink alone with him at the Tappo Italian
04:35PM 4 Restaurant in Buffalo?

04:35PM 5 A. No.

04:36PM 6 **MR. COOPER:** You can take that down, Ms. Champoux.

04:36PM 7 **BY MR. COOPER:**

04:36PM 8 Q. In June of 2015, did you attend a high school reunion at
04:36PM 9 the Big Ditch Brewery?

04:36PM 10 A. Yes.

04:36PM 11 Q. Were you and Peter Gerace the only people at the high
04:36PM 12 school reunion?

04:36PM 13 A. No.

04:36PM 14 Q. Was he your friend when you were at the high school
04:36PM 15 reunion?

04:36PM 16 A. No.

04:36PM 17 Q. Was Peter Gerace there?

04:36PM 18 A. Yes.

04:36PM 19 Q. Can you describe for the jury what happened at that high
04:36PM 20 school reunion with respect to you and Peter Gerace and
04:36PM 21 Joe -- was Joe Bongiovanni there at the high school reunion?

04:36PM 22 A. No.

04:36PM 23 Q. Did you see him that night?

04:36PM 24 A. I did.

04:36PM 25 Q. Describe for the jury how that night played out.

04:36PM 1 A. So, through the night, Gerace mentioned to me that
04:36PM 2 Bongiovanni was across the street at Tappo Restaurant with
04:36PM 3 his brother, Anthony.

04:36PM 4 Q. Now, at that time, this is June of 2015, is this a few
04:36PM 5 months before you actually come back to Buffalo to start
04:37PM 6 working there?

04:37PM 7 A. Yes.

04:37PM 8 Q. And by that time, in June of 2015, did you know
04:37PM 9 Bongiovanni to be a special agent with the DEA?

04:37PM 10 A. Yes.

04:37PM 11 Q. When Peter Gerace approached you and told you that
04:37PM 12 Bongiovanni was across the street with his brother, did you
04:37PM 13 have an interest, generally, in going to see Bongiovanni?

04:37PM 14 A. Initially, I told him no, I didn't want to go over.

04:37PM 15 Q. What happened then?

04:37PM 16 A. He said he's just across the street, it's like literally
04:37PM 17 right there. He asked me two or three times, and I agreed by
04:37PM 18 the third time.

04:37PM 19 Q. Did you go across the street?

04:37PM 20 A. Yes.

04:37PM 21 Q. What did you see when you went there?

04:37PM 22 A. So when I walked in, off to the right I saw Bongiovanni
04:37PM 23 sitting at the bar with -- I believe it was, like, three --
04:37PM 24 three or four other individuals.

04:37PM 25 Q. Did you recognize any of them?

04:37PM 1 A. I recognized Bongiovanni, not the other three or four.

04:38PM 2 Q. Okay. We've been talking about Peter Gerace. Is he in
04:38PM 3 the courtroom today?

04:38PM 4 A. Yes.

04:38PM 5 Q. Can you point him out and identify an article of his
04:38PM 6 clothing for the record?

04:38PM 7 A. Peter Gerace is wearing a blue tie and a gray suit.

04:38PM 8 Going like this, up and down. That's Peter Gerace with
04:38PM 9 glasses.

04:38PM 10 Q. Okay. Which seat is he sitting in?

04:38PM 11 A. Between his two attorneys.

04:38PM 12 **MR. COOPER:** Okay. So the person in the middle,

04:38PM 13 Judge, I'd ask the record to reflect that he's identified the
04:38PM 14 defendant.

04:38PM 15 **THE COURT:** It does.

04:38PM 16 **BY MR. COOPER:**

04:38PM 17 Q. And did you say he was nodding his head while you were
04:38PM 18 looking at him?

04:38PM 19 A. Yes, he was nodding his head up and down.

04:38PM 20 Q. When the defendant asked you to walk across the street to
04:38PM 21 see Bongiovanni, did he tell you who Bongiovanni was with?

04:38PM 22 A. Just his brother.

04:38PM 23 Q. Whose brother?

04:38PM 24 A. Peter's brother, Anthony.

04:38PM 25 Q. What happened when you walked across the street with the

04:38PM 1 defendant to see Bongiovanni?

04:38PM 2 A. When I first walked in, we walked up to them, and Joe
04:39PM 3 turned around and seemed really surprised to see me.

04:39PM 4 He said, what are you doing here? I thought you were in
04:39PM 5 New York.

04:39PM 6 I said, I am still working in New York. I came home for
04:39PM 7 my reunion.

04:39PM 8 He looked pretty uncomfortable, almost like he didn't
04:39PM 9 want to be there. He eventually introduced me to Anthony
04:39PM 10 Gerace, who was sitting next to him. He introduced me to the
04:39PM 11 three other -- or, I believe, there were three other people,
04:39PM 12 I don't remember who they are, but, yeah, he introduced me to
04:39PM 13 Anthony Gerace and to other people.

04:39PM 14 Q. And when you say he looked surprised to see you, you
04:39PM 15 mean, like, happy surprised? Or, like, concerned surprised?

04:39PM 16 A. Like, uncomfortable.

04:39PM 17 Q. During your time at the DEA, did you ever initiate or
04:39PM 18 attempt to investigate this defendant, Peter Gerace?

04:39PM 19 A. Yes.

04:39PM 20 Q. Did that investigation include an investigation of
04:40PM 21 Pharaoh's Gentlemen's Club?

04:40PM 22 A. Yes.

04:40PM 23 Q. Did you get very far in that investigation?

04:40PM 24 A. No.

04:40PM 25 Q. Okay. We're going to cover it in more detail.

04:40PM 1 When you did start looking into this defendant?

04:40PM 2 A. I believe it was summer of 2016.

04:40PM 3 Q. What brought Mr. Gerace to your attention as a target of

04:40PM 4 an investigation?

04:40PM 5 A. There were a few things.

04:40PM 6 It was no secret amongst people that I knew, classmates,

04:40PM 7 that he was a --

04:40PM 8 **MR. FOTI:** Objection, Judge.

04:40PM 9 **MR. COOPER:** Judge, it's the state of mind.

04:40PM 10 **THE COURT:** Hang on. What's the basis of the

04:40PM 11 objection?

04:40PM 12 **MR. FOTI:** Hearsay. It's -- can we approach? Sorry.

04:40PM 13 **THE COURT:** Yeah, come on up.

04:40PM 14 (Sidebar discussion held on the record.)

04:41PM 15 **THE COURT:** The question is why he started

04:41PM 16 investigating Gerace.

04:41PM 17 **MR. FOTI:** Anything about it being no secret among

04:41PM 18 what other people thought or knew, I -- I'm not entirely sure

04:41PM 19 what his answer is gonna be. But I expect that --

04:41PM 20 **MR. COOPER:** It's in the transcript from his prior

04:41PM 21 testimony, and we covered this topic at the most recent

04:41PM 22 Bongiovanni trial. And it's not being offered for the truth

04:41PM 23 of the matter asserted. There's been --

04:41PM 24 **MR. FOTI:** Why he's --

04:41PM 25 **MR. COOPER:** Correct. And there's been repeated

04:41PM 1 cross-examination where the explanation has been, Judge, it
04:41PM 2 goes to the investigation.

04:41PM 3 So I have to be able to explain that he didn't pull
04:41PM 4 it out of his hat, or do it because he didn't like him, that's
04:41PM 5 my job.

04:41PM 6 **THE COURT:** He certainly can testify to why he
04:41PM 7 started investigating him. Why can't he testify to why he
04:41PM 8 started investigating him?

04:41PM 9 **MR. FOTI:** I just -- I have 403 concerns about
04:41PM 10 information that he -- as long as it's -- if -- if there's
04:41PM 11 clarification that --

04:41PM 12 **THE COURT:** Why don't you lead a little bit more.
04:42PM 13 This witness does have a tendency to go on and volunteer
04:42PM 14 stuff.

04:42PM 15 **MR. COOPER:** That's Tom Herbst, Judge.

04:42PM 16 **THE COURT:** Pardon me?

04:42PM 17 (Simultaneous speaking.)

04:42PM 18 **THE COURT:** So why don't you lead a little bit, and
04:42PM 19 try to keep it narrower. Ask -- you can lead using anything
04:42PM 20 that you think is appropriate, lead. But -- but I understand
04:42PM 21 Mr. Foti's concern where he starts with something like there's
04:42PM 22 no secret that. That would concern me, too.

04:42PM 23 **MR. COOPER:** Okay.

04:42PM 24 **THE COURT:** So, so, you can ask questions about why
04:42PM 25 he investigated him, and -- and -- but -- but just try to keep

04:42PM 1 it relatively narrow. I don't think the subject matter is off
04:42PM 2 limits at all, I think it comes in. The way you couch it may
04:42PM 3 be problematic. That's all. Okay?

04:42PM 4 **MR. COOPER:** Yep. Thanks, Judge.

04:43PM 5 (End of sidebar discussion.)

04:43PM 6 **MR. COOPER:** Judge, based on the bench conference,
04:43PM 7 I'm going to ask for a second to find some specific questions
04:43PM 8 to ask.

04:43PM 9 **THE COURT:** Absolutely.

04:43PM 10 **MR. COOPER:** Just bear with me time-wise for a second
04:43PM 11 here.

04:43PM 12 **THE COURT:** And you're withdrawing the last question?

04:43PM 13 **MR. COOPER:** Based on the discussion, I'm going to
04:43PM 14 ask some leading specific questions, but I just need a minute.

04:43PM 15 **THE COURT:** Yep.

04:43PM 16 **MR. COOPER:** Thank you.

04:44PM 17 **BY MR. COOPER:**

04:44PM 18 Q. While you were at that high school re --

04:44PM 19 Just answer specifically what I'm asking you.

04:44PM 20 You understand what we're doing here?

04:44PM 21 A. Yes.

04:44PM 22 Q. Okay. While you were at that high school reunion in
04:44PM 23 about June of 2015, did a classmate of yours who worked in
04:44PM 24 law enforcement make statements to you that caused you to be
04:44PM 25 interested in pursuing an investigation of Peter Gerace and

04:44PM 1 Pharaoh's Gentlemen's Club?

04:44PM 2 A. Yes.

04:44PM 3 Q. Describe for the jury what that person said to you.

04:45PM 4 A. He said that Gerace was videotaping everybody in his
04:45PM 5 club.

04:45PM 6 Q. Did he -- sorry. So I'd like to be a little more

04:45PM 7 specific than that. Did he tell you specifically something

04:45PM 8 along the lines of that Gerace had recordings of people with
04:45PM 9 strippers?

04:45PM 10 A. Something along those lines, yeah.

04:45PM 11 Q. Okay. At that same reunion, did you hear other
04:45PM 12 classmates making comments about going to Pharaoh's

04:45PM 13 Gentlemen's Club to use cocaine?

04:45PM 14 A. Yes.

04:45PM 15 Q. Is that a social activity that you were interested in
04:45PM 16 participating in?

04:45PM 17 A. No.

04:45PM 18 Q. At the time, were you a DEA agent?

04:46PM 19 A. Yes.

04:46PM 20 Q. Did it stick in your mind and later materialize in an
04:46PM 21 interest in investigating Peter Gerace?

04:46PM 22 A. Yes.

04:46PM 23 **MR. COOPER:** Judge, if we can approach just for one
04:46PM 24 more before I ask it?

04:46PM 25 **THE COURT:** Absolutely.

04:46PM 1 **MR. COOPER:** Thank you.

04:46PM 2 (Sidebar discussion on the record.)

04:46PM 3 **THE COURT:** Fine.

04:46PM 4 **MR. COOPER:** Actually, no.

04:46PM 5 **THE COURT:** Oh.

04:46PM 6 **MR. COOPER:** So I want to obviously, I understand

04:46PM 7 that this is Mr. Gerace's trial, and so things that came in in

04:46PM 8 Bongiovanni don't necessarily come in in Gerace. We've been

04:46PM 9 cautious up to this point in the trial of discussing the

04:46PM 10 defendant's status as a federally convicted felon. That's

04:47PM 11 something I expect he'll testify he was aware of and that

04:47PM 12 factored into his decision to pursue an investigation of that

04:47PM 13 person. It's common in law enforcement for that to be

04:47PM 14 something that causes you to look at one target versus

04:47PM 15 another.

04:47PM 16 I don't know, I wanted to come up and discuss it. I

04:47PM 17 think it goes to the same basis. If there's a way for me to

04:47PM 18 soften it, they've already heard from Lepiane that he was on

04:47PM 19 federal probation. I want to front it for you and see where

04:47PM 20 your position is on it.

04:47PM 21 **MR. FOTI:** Judge, I think my problem, I understand

04:47PM 22 there's a reason being provided, and I think the reason it's

04:47PM 23 being provided in good faith for why you want to ask about it.

04:47PM 24 But it's also -- that can be the beginning of the target of

04:47PM 25 any investigation. In any case where somebody has a prior

04:47PM 1 felony, if that factored into the considerations of the
04:47PM 2 investigators, it would become part of the trial. And that's
04:47PM 3 clearly not the case.

04:48PM 4 **THE COURT:** No, but it could add to the equation. It
04:48PM 5 could be -- it could be, you know, an incremental additional
04:48PM 6 reason. Again, so the jury knows that he's on release, they
04:48PM 7 know -- they know that he has a conviction of some sort. Why
04:48PM 8 do you have to give them any more than that?

04:48PM 9 **MR. COOPER:** No, that's fine. I'm just trying to
04:48PM 10 front it because I don't want to have a big blowup.

04:48PM 11 **THE COURT:** I thought the pretrial ruling was they
04:48PM 12 could get into the fact that he has a conviction, but they
04:48PM 13 can't get into the fact that he has a felony, so that's what I
04:48PM 14 understood.

04:48PM 15 **MR. COOPER:** Okay.

04:48PM 16 **THE COURT:** So -- so I don't have a problem with
04:48PM 17 your, again, leading, and using the word "conviction," not
04:48PM 18 using the word "felony."

04:48PM 19 **MR. COOPER:** All right.

04:48PM 20 **THE COURT:** It's a fine line, but I think may be
04:48PM 21 important.

04:48PM 22 **MR. COOPER:** Got it. Okay. That's what I'll do.

04:48PM 23 **MR. FOTI:** Understood.

04:48PM 24 (End of sidebar discussion.)

04:48PM 25 **BY MR. COOPER:**

04:48PM 1 Q. Sir, I'm going to ask you a very specific question, and I
04:48PM 2 want you to give me a yes-or-no answer to this one, okay?

04:48PM 3 A. Okay.

04:48PM 4 Q. At that time, were you aware that this defendant had a
04:49PM 5 prior conviction? Yes or no.

04:49PM 6 A. Yes.

04:49PM 7 Q. Okay. As a law enforcement officer, is that something,
04:49PM 8 generally, that can factor into your analysis of who's a
04:49PM 9 viable target for investigation?

04:49PM 10 A. Being a prior felon?

04:49PM 11 Q. Well, being -- having any prior conviction, is that
04:49PM 12 something that can factor into your analysis?

04:49PM 13 A. Sure.

04:49PM 14 **MR. FOTI:** Judge, can we approach?

04:49PM 15 **THE COURT:** Yeah, come on up.

04:49PM 16 (Sidebar discussion on the record.)

04:49PM 17 **THE COURT:** That wasn't Mr. Cooper's fault.

04:49PM 18 **MR. FOTI:** Well, it was -- it wasn't, except there is
04:49PM 19 witness prep where that type of thing is supposed to be
04:49PM 20 avoided when we make decisions to keep things out.

04:49PM 21 **THE COURT:** So I'm going to instruct the jury to
04:49PM 22 disregard the use of the word "felon," and he's testified that
04:49PM 23 he had a conviction, and that's all we know.

04:49PM 24 **MR. FOTI:** I'd also, I was going to ask for this
04:50PM 25 earlier, if there's going to be a curative instruction, I'd

04:50PM 1 also ask to include a curative instruction letting the jury
04:50PM 2 know that any statements that he testified to from classmates,
04:50PM 3 not being offered for the truth of the matter asserted, that
04:50PM 4 the jury is not to speculate as to anything in regards to
04:50PM 5 whether there's any truthfulness to anything that was said.

04:50PM 6 **THE COURT:** Talking about drug use at Pharaoh's?

04:50PM 7 **MR. FOTI:** The drug -- really, the most prejudicial
04:50PM 8 thing is this idea that he's gonna blackmail people with
04:50PM 9 recordings, that he said classmates were telling him that he
04:50PM 10 has videos of people. I mean --

04:50PM 11 **THE COURT:** That's being offered for --

04:50PM 12 **MR. COOPER:** Just for his state of mind.

04:50PM 13 **THE COURT:** Right.

04:50PM 14 **MR. COOPER:** And that's -- I've tried to couch my
04:50PM 15 questions in that way. And that's what I was trying to --

04:50PM 16 **THE COURT:** Mr. Cooper, I -- I disagree with Mr. Foti
04:50PM 17 that you did anything that at all that caused this. So
04:50PM 18 believe me, you don't have to defend yourself, okay?

04:50PM 19 **MR. COOPER:** Okay.

04:50PM 20 **THE COURT:** So I will give those two curative
04:50PM 21 instructions. Okay?

04:50PM 22 **MR. FOTI:** Yes.

04:50PM 23 (End of sidebar discussion.)

04:50PM 24 **THE COURT:** Okay, folks. So -- so two things that I
04:50PM 25 want to talk to you about.

04:51PM 1 One is that the testimony that this witness gave
04:51PM 2 about things that people said to him at the reunion about
04:51PM 3 Mr. Gerace and Pharaoh's, those are being offered only for the
04:51PM 4 witness's state of mind. Whether those things are true or
04:51PM 5 not, we don't know. Again, this is pure hearsay. But it's
04:51PM 6 not really hearsay because when it's offered for somebody's
04:51PM 7 state of mind, the law says that's not hearsay. Okay?

04:51PM 8 But it's just for his state of mind. We don't know
04:51PM 9 whether those things are true or not, because it's something
04:51PM 10 that somebody else is saying that that person may have heard,
04:51PM 11 or we don't -- we have no idea how that person knew.

04:51PM 12 That person's not going to testify who said it to
04:51PM 13 Mr. Casullo, so we really don't know whether that's true or
04:51PM 14 not. We know that he heard it, and we know that that's one of
04:51PM 15 the things that triggered him to do the investigation. But we
04:51PM 16 don't know whether what he heard is true. Okay?

04:51PM 17 So that's number 1.

04:51PM 18 Number 2, he just used the word "felon." We don't
04:51PM 19 know that either.

04:51PM 20 Mr. Cooper asked whether he was convicted, and we
04:51PM 21 know that he was convicted of something, we don't know what he
04:52PM 22 was convicted of. And again, you're not -- I'm going to
04:52PM 23 strike the testimony about convicted felon, and you're to only
04:52PM 24 understand that Mr. Gerace was convicted of something. Okay?
04:52PM 25 That's all.

04:52PM 1 Go ahead.

04:52PM 2 **MR. COOPER:** Thank you, Judge.

04:52PM 3 **BY MR. COOPER:**

04:52PM 4 Q. So, my question very specifically, does the fact that
04:52PM 5 somebody has a prior conviction, can that weigh on your
04:52PM 6 decision as an investigator to pursue that person?

04:52PM 7 A. Yes.

04:52PM 8 Q. Okay. I think you told me a few moments ago that it was
04:52PM 9 sometime in 2016 when you decided to begin this
04:52PM 10 investigation; is that correct?

04:52PM 11 A. Yes.

04:52PM 12 Q. What was the first investigative step that you took?

04:52PM 13 A. I had a conversation with my supervisor of the group.

04:52PM 14 Q. Okay. And is that something that's standard to do?

04:53PM 15 A. Yeah. Pretty much.

04:53PM 16 Q. Okay. Are you familiar with the word "tolls?"

04:53PM 17 A. Yes.

04:53PM 18 Q. Like, T-O-L-L-S?

04:53PM 19 A. Yes.

04:53PM 20 Q. What are tolls?

04:53PM 21 A. Tolls are phone records of communications between two
04:53PM 22 numbers, two people, that show, you know -- there's -- it
04:53PM 23 shows a phone number, it shows a duration, a date, a duration
04:53PM 24 of time.

04:53PM 25 Q. Okay. Do toll records -- so, hypothetically, let's say

04:53PM 1 John Smith texted you. Would toll records show what John
04:53PM 2 Smith said to you in the text message?

04:53PM 3 A. No. It doesn't show content.

04:53PM 4 Q. Okay. And so, if John Smith called you, would a toll
04:53PM 5 record indicate what John Smith said to you?

04:53PM 6 A. No.

04:53PM 7 Q. Do toll records list out, kind of like, in an Excel

04:53PM 8 spreadsheet form or PDF, do they list out just the existence
04:53PM 9 of incoming and outgoing calls?

04:53PM 10 A. Yes.

04:53PM 11 Q. Okay. Are toll records, subpoenaing them, getting them,
04:53PM 12 reviewing them, is that a big part of what you do at the DEA?

04:53PM 13 A. Sure. It's one of the first steps we take in an
04:54PM 14 investigation.

04:54PM 15 Q. Okay. Is that common for a DEA agent in a drug
04:54PM 16 investigation?

04:54PM 17 A. Very common.

04:54PM 18 Q. Why is it common in a drug investigation to subpoena and
04:54PM 19 acquire toll records of a target?

04:54PM 20 A. Sure. The way you're trained, in most drug
04:54PM 21 investigations, is that there's the possibility that it may
04:54PM 22 be a conspiracy, meaning other people being involved. People
04:54PM 23 that may be suppliers, or couriers, or source of supply that
04:54PM 24 supplies drugs.

04:54PM 25 So you're trying to identify the possibility of a

04:54PM 1 conspiracy, and other individuals that might be involved with
04:54PM 2 that criminal activity.

04:54PM 3 Q. Is it an effective tool in beginning an investigation?

04:54PM 4 A. Yes.

04:54PM 5 Q. Is it -- it's not the only thing you do, right?

04:54PM 6 A. No.

04:54PM 7 Q. Did you make a determination early on in that

04:54PM 8 investigation into Peter Gerace to subpoena and acquire

04:54PM 9 Mr. Gerace's tolls or phone records?

04:55PM 10 A. Yes.

04:55PM 11 Q. Did you discuss that with anybody before you did it?

04:55PM 12 A. Yes.

04:55PM 13 Q. Who did you discuss it with?

04:55PM 14 A. With the group supervisor, Greg Yensan.

04:55PM 15 Q. Why did you discuss that with your group supervisor, Greg
04:55PM 16 Yensan, before you did it?

04:55PM 17 A. First, because for me to get a subpoena approved, it

04:55PM 18 would go through him, so I wanted to make him aware of it.

04:55PM 19 Number 1.

04:55PM 20 And number 2, I was aware that Joseph Bongiovanni, I

04:55PM 21 believed that he was friends with Peter Gerace, so I wanted

04:55PM 22 to give him a heads-up that if I pulled phone records that it

04:55PM 23 was possible that Joseph Bongiovanni's phone number may show

04:55PM 24 up in the phone records.

04:55PM 25 Q. At that time, did you have any problem with Joe

04:55PM 1 Bongiovanni?

04:55PM 2 A. No. No.

04:55PM 3 Q. Earlier you described that when you started working at
04:55PM 4 DEA, the relationship was fine, you worked on cases together.

04:55PM 5 Was that the status at the time in 2016 when you acquired the
04:55PM 6 toll records?

04:55PM 7 A. Yes.

04:55PM 8 Q. Were you trying to get Bongiovanni in trouble?

04:56PM 9 A. No.

04:56PM 10 Q. Did you eventually obtain a subpoena return that gave you
04:56PM 11 Mr. Gerace's phone records?

04:56PM 12 A. Yes.

04:56PM 13 Q. Is that for all time, or for a limited period of time?

04:56PM 14 A. It's -- you can detail the timeframe that you want phone
04:56PM 15 records. And it's typically 30 months is what it typically
04:56PM 16 is. You can change it beyond that, beyond that if you want,
04:56PM 17 but it may take longer for the records to come back. But
04:56PM 18 typically, like, it defaults to 30 days.

04:56PM 19 Q. Okay. So during your answer, you said 30 months and 30
04:56PM 20 days.

04:56PM 21 A. I'm sorry.

04:56PM 22 Q. That's okay.

04:56PM 23 A. Yep.

04:56PM 24 Q. Which one is it?

04:56PM 25 A. It's 30 days, I'm sorry. Not 30 months.

04:56PM 1 Q. Okay. So a month -- 30 months? 30 days, is that the
04:56PM 2 standard length of time that you get back?

04:56PM 3 A. Yes.

04:56PM 4 Q. And you can ask for more or less if you want to?

04:56PM 5 A. Correct.

04:56PM 6 Q. When you got Mr. Gerace's phone records back, did you

04:56PM 7 recognize the phone number of anybody that Gerace had been in
04:56PM 8 contact with?

04:56PM 9 A. Yes.

04:56PM 10 Q. Who?

04:56PM 11 A. Joseph Bongiovanni.

04:57PM 12 Q. When you saw that Bongiovanni had been in contact with
04:57PM 13 Mr. Gerace, and vice versa, what did you do?

04:57PM 14 A. Before when I explained to my supervisor that

04:57PM 15 Bongiovanni's number might be with the phone records, he told
04:57PM 16 me to subpoena the numbers and to see if that number was in
04:57PM 17 the phone records, and if was, to bring him the records.

04:57PM 18 Q. Did you follow that instruction from your boss?

04:57PM 19 A. And that's exactly what I did.

04:57PM 20 Q. Okay.

04:57PM 21 **THE COURT:** Mr. Cooper, is this a good time to --

04:57PM 22 **MR. COOPER:** Yeah, I'm certainly not finishing, so --

04:57PM 23 **THE COURT:** Okay. So, folks, we were going to break
04:57PM 24 for the day. Remember my instructions about not communicating
04:57PM 25 about the case with anyone. Don't use tools --

04:57PM 1 I know you're getting sick of hearing me, but I'm
04:57PM 2 going to do it every day, twice a day, because it's so darn
04:57PM 3 important.

04:57PM 4 So don't use tools of technology to research the case
04:57PM 5 or to communicate about the case with anyone. Don't read or
04:57PM 6 watch or listen to any news coverage of the case, if there is
04:57PM 7 any, while the case is on trial. And don't make up your mind
04:58PM 8 about anything until you start deliberating.

04:58PM 9 See you tomorrow morning at 9:30. Get a good night's
04:58PM 10 sleep. Drive carefully. Thank you very much.

04:58PM 11 (Jury excused at 4:58 p.m.)

04:58PM 12 **THE COURT:** Okay. Mr. Casullo, I think you know
04:58PM 13 you're not to talk to anybody about your testimony between now
04:58PM 14 and tomorrow morning.

04:58PM 15 **THE WITNESS:** Yes, Judge.

04:58PM 16 **THE COURT:** Anything from the defense?

04:58PM 17 **MR. FOTI:** No.

04:58PM 18 **THE COURT:** Anything from the government?

04:58PM 19 **MR. COOPER:** I just have one request, but you can go
04:58PM 20 Tony, if you're good.

04:58PM 21 **THE COURT:** Yes.

04:58PM 22 (Witness excused at 4:58 p.m.)

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